IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE G. BIKSHAPATHY**

**And**
**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION NO : 10282 of 1998**

Between:

1 G.Jagannadham S/o.Krishna, NMR/Daily Wage Worker,
Taliperu Project Dam Site, Medium Project Division No.1, Satyanarayanapuram,
Khammam District.
2 P.Vijaya Kumar S/o.Varada Rajan,
Medium Project Division No.1, Satyanarayanapuram,
Khammam District.
3 Ch.Srinivasa Rao S/o.Subba Rao,
Medium Project Division No.1, Satyanarayanapuram,
Khammam Dist.

**..... PETITIONERS**

AND

1 The Engineer-in-Chief Irrigation Wing,
Errumanzil Hyderabad.
2 The Superintending Engineer, I&CAD., Irrigation Circle,
Nakkalagutta Post, Hanamakonda,
Warangal District.
3 The Executive Engineer, I&CAD, Medium Project Division No.1,
Satyanarayanapuram, Khammam District.
4 The Deputy Executive Engineer, Sub-Division No.1,
Satyanarayanapuram, Khammam District
5 The Government of A.P., represented by its Secretary, Irrigation Department,
Secretariat, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, declaring the action of the Hon'ble Andhra Pradesh Administrative Tribunal in dismissing O.A.No.520 of 1996 by its Order dated 12-03-1998 as arbitrary, illegal, unjust, violative of the Fundamental Rights guaranteed to the petitioners under Articles 14,16 and 21 of the Constitution of India, besides being contrary to the Directive Principles contained in Articles 38,41,42,43 and 47 of the Constitution of India and issue the consequential direction to the respondents to regularise the services of the petitioners in accordance with the pronouncement of the Apex Court and also G.O.Ms.No.212 dated 22-04-1994 and pass such other order or orders.

**Counsel for the Petitioners: MR.C.H.SATISH KUMAR**

**Counsel for the Respondents: GP FOR FINANCE & PLANNING**

**CONTEMPT CASE NO : 21 of 2005**

(Contempt Case under Sections 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 28.10.2004 in WPMP No 18980 of 2004 in WP No.10282 of 1998.

Between:

1 G. Jagannadham, S/o Krishna, NMR/Daily Wage Worker,
Taliperu Project Division, Project Division No.1, Satyanarayanapuram,
Cherla (M), Khamma District.
2 P. Vijaya Kumar, S/o Varadarajan,
Taliperu Project Division, Project Division No.1, Satyanarayanapuram,
Cherla (M), Khamma District.
3 Ch. srinivasa Rao, S/o Subba Rao,
Taliperu Project Division, Project Division No.1, Satyanarayanapuram,
Cherla (M), Khamma Dist.

**..... PETITIONERS**

AND

1 B. Prakash Rao, Engineer-in-Chief,
Irrigation Wing, Erramanzil, Hyderabad.
2 Hanumantha Rao, Superintending Engineer,
I & CAD Irrigation Circle, Nakkalagutta Post,
Hanamakonda, Warangal District.
3 Prabhakar Rao, Executive Engineer,
I & CAD Medium Project, Division No.1, Satyanarayanapuram,
Charla (M), Khammam District.

**.....RESPONDENTS**

**Counsel for the Petitioners: MR.C.H.SATISH KUMAR**

**Counsel for the Respondents: GP FOR FINANCE & PLANNING**

**The Court made the following:**

ORAL ORDER: (per GB. J.)

Writ Petition No.10282 of 1998 is filed challenging the order passed by A.P. Administrative Tribunal (hereinafter referred to as the Tribunal) in O.A.No.520 of 1996, dated 12.3.1998.

2. The matter has a long and chequered career. According to the petitioners they were initially engaged as NMRs in 1985 by the Irrigation Department at Taliperu Project in Khammam District and they were continued to be engaged for several years. It is their case that though they were making representations for regularization of their services, it did not yield any result. Therefore, they approached the Tribunal by filing O.A.No.79302 to 79304 of 1990 seeking a direction to regularize their services and the Tribunal disposed of the above O.As., on 25.7.1994 with a direction to the respondents therein to consider the cases of the petitioners herein in terms of G.O.Ms.No.212, dated 22.4.1994. However, the Superintending Engineer rejected the claim of the petitioners by an order dated 28.11.1994. Aggrieved by the said order, the petitioners filed O.A.No.124 of 1995 and the Tribunal by an order dated 11.7.1995 set aside the order of the Superintending Engineer dated 28.11.1994 on the ground that it is not open for the Superintending Engineer to reject the claims of the applicants and therefore the Superintending Engineer was directed to submit proposals to the Chief Engineer in the prescribed form as required in G.O.Ms.No.212 and on receipt of such proposals, the Chief Engineer will examine the same and pass appropriate orders or refer the matter to the Government, if necessary. Thereafter the Chief Engineer considered the matter and rejected their case for regularization. Against the said order, the petitioners filed O.A.No.520 of 1996 and the learned Tribunal dismissed the same by an order dated 12.3.1998. Against the said order, the present Writ Petition has been filed.

3. During the pendency of the Writ Petition, though number of W.P.M.Ps., as well as Contempt Case No.21 of 2005 were filed, they are not necessary to be considered, as the main Writ Petition itself is being disposed of now.

4. The contention of the learned counsel for the petitioners is that as the petitioners have been working right from 1985 continuously as NMRs, they are required to be regularized in service by virtue of G.O.Ms.No.212, dated 22.4.1994. He further

submits that the employee who completed five years of service as on 25.11.1993, he is only entitled for regularization. He also submits that the only ground mentioned in the order of rejection is that the Department did not engage the petitioners as NMRs/daily rated workers and the contractor supplied them, but, however, it is to be seen that the Superintending Engineer has sent the proposals for regularization of the services of the petitioners in his letter dated 5.8.1995. He further submits that the matter was discussed before the Deputy Commissioner of Labour under the provisions of Industrial Dispute Act and the Deputy Commissioner of Labour in his letter dated 5.12.1996 also recorded a finding that on an inspection of the establishment on 27.11.1996, it was found that about 45 employees were working on daily wages payment prescribed by Standard Scheduled Rates since 1977 onwards, but they were not provided National Festival Holidays declared by the Deputy Commissioner of Labour, Warangal, every year under the A.P. Factories and Establishments (National and Festival Holidays) Act, 1974. It is also stated that the Executive Engineer has called for the details of the NMRs so as to take action in accordance with GO.Ms.No.212, dated 22.4.1994 and accordingly the Deputy Executive Engineer by a letter dated 24.8.1994 furnished the list of NMR Labour working in the Project right from 1986 onwards and the names of the petitioners are figuring at serial Nos.2, 6 and 7. Thus, he submits that the stand taken by the Department that they are contract labour is wholly misconceived and it is only made with a sole view to deny the benefits arising under GO.Ms.No.212, dated 22.4.1994, and thus he submits that the order of rejection as passed by the Engineer-in-Chief is wholly illegal and not sustainable in law more especially in the wake of the documents referred to above and that the Tribunal has not taken into consideration any of these documents, but went on a different assumption that they were not selected by a properly constituted selection committee and they were not sponsored by the Employment Exchange, which are not germane for deciding this issue. Thus, the learned counsel would submit that the order of the Tribunal is liable to be set aside and the petitioners are entitled for regularization of service in pursuance of G.O.Ms.No.212, dated 22.4.1994.

5. Per contra, the learned Government Pleader for Finance and Planning submits that the petitioners were never employed as NMRs and they were employed only as contractor labour and therefore they cannot seek regularization in pursuance of G.O.Ms.No.212, dated 22.4.1994. He also submits that G.O.Ms.No.212 applies only in cases of NMRs/daily wage employees who have completed five years of regular

service, and since the petitioners do not fall within that category, they are not entitled for regularization, and therefore the order as passed by the Tribunal is valid. In support of his contention, he relied on the decisions reported in WORKMEN OF NILGIRI COOPERATIVE MARKETING SOCIETY LIMITED vs. STATE OF TAMILNADU[1] and A.UMA RANI vs. REGISTRAR OF COOPERATIVE SOCIETIES[2].

6. The issue that arises for consideration is whether the order of the Tribunal is sustainable and whether the petitioners are entitled for regularization.

7. It is not in dispute that the petitioners were engaged in the Department, but the question that calls for consideration is whether they were engaged as contract labour or NMRs.

8. The learned Government Pleader though vehemently submits that the petitioners were engaged in 1995 through contractors and not by the Department. That argument pales into insignificance and we are not concerned with the fact that whether the petitioners have completed five years of regular service as on the cut off date as mentioned in GO.Ms.No.212, dated 22.4.1994, but we have to consider only with regard to their engagement.

9. The Executive Engineer by his letter dated 14.7.1994 called upon the Deputy Executive Engineer to furnish the list of the NMRs and the Deputy Executive Engineer furnished the same by his letter dated 24.8.1994. This document being an authenticated document, wherein the names of the petitioners had figured at serial Nos.2, 6 and 7 along with others, the Department cannot dispute the same. That is the one circumstance which goes against the contention of the Department.

10. Secondly also, the Deputy Commissioner of Labour, Warangal, in his proceedings dated 5.12.1996 has categorically observed as follows:

> "The Union representatives also expressed that their services were not regularized though they were working since 1977 onwards (The Annexure is shown) herewith and the issue of regularization were discussed on 21.10.1996 and 31.10.1996 and on 27.11.1996. The issues pending before me for want of certain particulars. The employees representatives stated that during the conciliation meeting the management has not regularized the services of 45 workers who

are working on daily wages of standard scheduled rates since 1977. The standard scheduled rates were paid by the Executive Engineer, I&CAD, M.P. Division No.I, Satyanarayanapuram through their subordinates ie., Assistant Executive Engineer, Deputy Executive Engineer. It is also stated that in 1993, the Assistant Commissioner of Labour, Khammam on inspection of the establishment and directed that the Executive Engineer, I&CAD, Medium Project Division, Satyanarayanapuram, through their letter No.C/2222/93, dated 27.9.93 that all the 45 employees are working directly under Executive Engineer, Satyanarayanapuram. And also stated that they are not working under any contractor. Neither management of Irrigation Command Area Development Division No.1, nor contractors have registered with Labour Department and obtaining licence/Registration Certificate from the Labour Department till the day.

The mode of payment to the employees till June, 1994, that the Executive Engineer used to draw the temporary advance and paid the wages to the employees directly as per the Standard Scheduled Rates, from July, 1994 to October, 1994, the payments were made through the Pay and Accounts Officer, Khammam. Even presently the Assistant Executive Engineer, I&CAD, Medium Projects Division No.1, is arranging payment to the employees directly. The management of I&CAD Medium Project, Satyanarayanapuram have not produced any attendance register, wage register of the employees for the period".

The above letter goes to establish that the Department engaged the petitioners only as NMRs and they cannot be treated as contract labour in the absence of licence/registration certificate from the Labour Department. Under these circumstances, the petitioners cannot be said to be treated as contractor labour, and on the other hand there is any amount of clinching material to establish that they were engaged as NMRs. This aspect was not considered by the Engineer-in-Chief. Being the Head of the Department, he is necessarily to depend on the material placed before him by the lower Officers, who are at the helm of the affairs. There is no reason why the details furnished by the Deputy Executive Engineer in his letter dated 24.8.1994 should not be relied on and if we considers these matters in a proper perspective, the only inevitable conclusion is that the NMRs/daily wage employees should be treated as regular employees and not to be treated as contract labour. The Tribunal has taken into consideration the extraneous matters, which are not relevant for the purpose of deciding this case. It is also not understood as to how the NMRs., could be sponsored by an Employment Exchange. The observation of the Tribunal that they are not appointed by the Selection Committee and not sponsored by A.P. Public Service Commission are totally irrelevant in the case of

appointment as NMRs. Under those circumstances, we find that the order of the Tribunal is wholly misconceived and the same is liable to be set aside so also the order passed by the Engineer-in-chief dated 6.10.1995.

11. With regard to the conditions laid down in GO.Ms.No.212, dated 22.4.1994, the petitioners were working in the Department for the last five years as on the cut off date. In the instant Writ Petition, the rejection of regularization was made only on the ground that they are not departmental labour, but they are contract labour. Under these circumstances, it has to be inferred that there are no impediments in the implementation of the orders in respect of the petitioners once it is held that they are departmental labour (NMRs).

12. The decisions of the Supreme Court referred to above, relied on by the learned Government Pleader, are not of any assistance. In Workmen of Nilgiri Co-operative Marketing Society Limited case (1 supra) the question was whether the porters engaged by growers and merchants for themselves for loading, unloading or grading are the workmen of the Society. The Supreme Court held in negative. In Umarani case (2 supra) it was held that no regularization is permissible in exercise of statutory power conferred if the appointments have been made in contravention of the Rules.

13. In the light of our above discussion, the Writ Petition is allowed, and the respondents are directed to regularize the services of the petitioners in accordance with GO.Ms.No.212, dated 22.4.1994 with effect from 25.11.1993. It is made clear that in view of the regularization of the services of the petitioners, they are entitled for physical monetary benefits from the date of filing of the Writ Petition. No costs.

CC.No.21 of 2005

14. In view of the orders passed in Writ Petition No.10282 of 1998, no orders are necessary in this Contempt Case.

15. Accordingly the Contempt Case is closed and the petitioners shall be deemed to have been regularized in service from 25.11.1993 with all consequential benefits as indicated above.

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(G.BIKSHAPATHY, J.)

13th April, 2005.

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(P.S.NARAYANA, J.)

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To

1 Sri B.Prakash Rao, Engineer-in-Chief Irrigation Wing,
Errumanzil Hyderabad.
2 Sri Hanumantha Rao, Superintending Engineer, I&CAD., Irrigation Circle,
Nakkalagutta Post, Hanamakonda,
Warangal District.
3 Sri Prabhakar Rao, Executive Engineer, I&CAD, Medium Project Division No.1,
Satyanarayanapuram, Khammam District.
4 The Deputy Executive Engineer, Sub-Division No.1,
Satyanarayanapuram, Khammam District
5 The Secretary, Irrigation Department,Government of A.P.,
Secretariat, Hyderabad.

6 The Registrar, A.P. Administrative Tribunal, Hyderabad.

7 2 CCs to G.P. for Finance and Planning, High Court of A.P. Hyderabad. (OUT)

8 2 CD copies.